

REMARKS

Favorable consideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-31 are presently pending in this application, Claims 8-21, 24 and 26-31 having been amended by the present amendment.

Claims 8-21, 24 and 26-31 have been amended to remove the noted improper multiple dependencies.

In response to the Election Requirement stated in the outstanding Official Action, Applicants provisionally elect Group III, Claims 22 and 25 (indicated as “directed to a species of electrochromic element comprising a transparent intermediate layer composed of a metal oxide other than a nickel oxide or a metal or a composite comprising a metal oxide other than the nickel oxide and a metal as a main component is place between an oxidative coloration layer containing a nickel oxide and a solid electrolyte layer”) as well as Claims 24 and 26-31 which have been amended to depend from one of Claims 22 and 25.

Applicants respectfully traverse the outstanding Election Requirement for the following reasons.

First, the outstanding Office Action simply states as follows:

This application contains claims directed to the following patentably distinct species of the claimed invention: Group I, claim 1, is directed to a species of electrochromic element having a configuration that a reductive coloration layer and an oxidative coloration layer are arranged in a facing manner between which a solid electrolyte layer is intervened; Group II, claims 2 and 5, is directed to a species of electrochromic element comprising a first electrode layer, a reductive coloration layer, a solid electrolyte layer, an oxidative coloration layer, and a second electrode layer laminated between two plate materials, and at least combination of a plate material at one side with the electrode layer of the two plate materials and the two electrode layers being made transparent; Group III, claims 22 and 25, is directed to a species of electrochromic element comprising a transparent intermediate layer composed of a metal oxide other than a nickel oxide or a metal or a

composite comprising a metal oxide other than the nickel oxide and a metal as a main component is placed between an oxidative coloration layer containing a nickel oxide and a solid electrolyte layer.

However, MPEP § 808.01 states the following:

The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given.

The outstanding Election Requirement merely provides the aforementioned conclusory statement and does not present particular reasons for such a holding. Hence, Applicants respectfully submit that in the absence of any annunciated basis, the PTO has not carried its burden of proof stated in MPEP § 808.01.

Furthermore, MPEP §803 states the following:

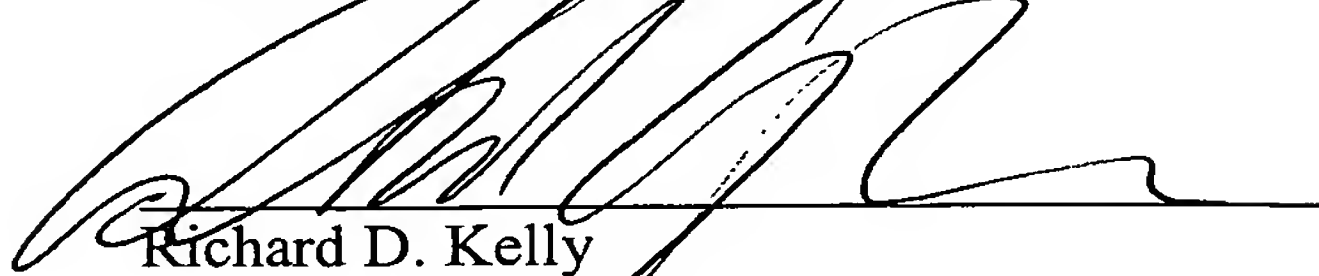
If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.

Claims 1-31 of the present application are all directed to electrochromic elements. Thus, it appears that Claims 1-31 in the present application are part of an overlapping search area and that a search for Claims 22 and 24-31 would necessarily include a search directed to the remaining non-elected claims as well. Applicants therefore respectfully submit that there is no undue burden on the Examiner to search all the claims under MPEP §803, and traverses the Election of Species Requirement on the grounds that a search and examination of the entire application would not place a serious burden on the Examiner.

In view of the amendment and discussions presented above, it is respectfully requested that the requirement to elect a single group be withdrawn, and that a full examination on the merits of Claims 1-31 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Richard D. Kelly
Attorney of Record
Registration No. 27,757

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

Akihiro Yamazaki
Registration No. 46,155

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